



January 26, 2015

**Hon. Michael Burgess (R-TX-26)**  
**Chairman**  
**Commerce, Manufacturing & Trade**  
**Subcommittee**

**Hon. Jan Schakowsky (D-IL-09)**  
**Ranking Member**  
**Commerce, Manufacturing & Trade**  
**Subcommittee**

**Re: Tomorrow's hearing on "What are the Elements of Sound Data Breach Legislation?"**

Dear Chairman Burgess and Ranking Member Schakowsky,

On behalf of the Marketing Research Association (MRA),<sup>1</sup> I write to share our views on data security legislation, the subject of your CMT Subcommittee hearing tomorrow. Spurred by the President's proposal, we hope you will (1) be careful in what kind of information gets covered by the bill, (2) avoid giving APA rulemaking authority to the Federal Trade Commission (FTC) to radically expand that definition, and (3) not set arbitrarily brief timelines for breach notification.

1. **Definition too broad:** The President's proposed definition for covered information ("sensitive personally identifiable information" in his draft) includes online account access information (e.g., usernames/passwords), which don't necessarily pose a security threat unless they provide access to truly sensitive personally identifiable information. Such types of data and combinations are not broadly recognized as posing a threat of ID theft and criminal abuse, and could lead to a slippery slope where most every piece of data could be covered.
2. **Too much FTC power:** Giving APA rulemaking authority to the FTC to alter that already too broad definition of "sensitive personally identifiable information," as the President proposed, would be a grave mistake. The agency would undoubtedly expand the definition radically. FTC Commissioner Ramirez<sup>2</sup> and others at the FTC have said that they consider almost any piece of data to ultimately be personally identifiable. The data covered by this bill is best determined by Congress, not an unelected and unaccountable regulatory body. Such radical expansion would result in more uncertainty for American employers, including survey, opinion and marketing research organizations, whose livelihood depends on the legitimate and accurate collection and analysis of information provided by consumers. The FTC would still be able to modify the definition using its regular Magnuson-Moss rule-making authority and we feel that should be sufficient to grapple with any major modifications to the definition that might be necessary over time.
3. **Arbitrarily short notice period:** The requirement in the President's draft to notify within 30 days of data breach discovery will be too short for some modern data breach investigations, which can be extremely complex and challenging. That is why laws usually require a "reasonable amount of time." By contrast, HIPAA has a 60 day limit.

We look forward to the Subcommittee's hearing tomorrow and working with the Subcommittee on a national data security bill that protects consumers without hindering survey, opinion and marketing research.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Howard Fienberg'.

Howard Fienberg  
Director of Government Affairs  
Marketing Research Association (MRA)

<sup>1</sup> MRA, a non-profit national membership association, represents the survey, opinion and marketing research profession and strives to improve research participation and quality. We keenly focus on data security and consumer privacy, since personal data is essential to the research process and our ability to deliver insights to clients.

<sup>2</sup> For example, at an [Energy & Commerce CMT Subcommittee hearing on July 15, 2011](#): "I think that the touchstone here is information that can be uniquely tied to an individual... broader than the definition that is currently used in the draft bill."